GOVERNMENT OF MALAYSIA

v.

TEOH CHAI SIOK

HIGH COURT MALAYA, ALOR SETAR
KC VOHRAH J
[CIVIL SUIT NO. 21-01-88]
4 OCTOBER 1989

REVENUE LAW: *Whether s. 6(1) of the Limitation Act 1953 applies to bar recovery - Whether the increases under the Income Tax Act 1967 are barred from recovery under s. 6(4) of the Limitation Act as they are penalties - Whether the use of the word "debt" in s. 106(1) of the Income Tax Act 1967 is the same as the word "debt" in s. 6(1) of the Limitation Act 1953 - Proviso to s. 33(1) of the Limitation Act 1953 - Sufficient to exclude recovery of tax from the defence of limitation.*

The plaintiff claimed a sum of RM333,400.33 being additional tax and payment increases under the Income Tax Act ("the Act") assessed against the defendant in respect of the assessment 1974 with interest at 8% per annum from the date of judgment.

The plaintiff filed for summary judgment and annexed thereto a certificate pursuant to s. 142(1) of the Act signed for and on behalf of the Director General of Inland Revenue which certificate stated that the defendant was indebted to the plaintiff in the sum of RM333,400.33. Under s. 142(1) the production of such a certificate shall be sufficient evidence of the amount so due and sufficient authority for the Court to give judgment for that amount.

A breakdown of the sum of RM333,400.33 is as follows:

(a) RM288,658.30 being additional tax for year of assessment 1974 notice of assessment of which was dated 18 January 1975 and served on the defendant;

(b) late payment of RM28,865.83 being increased sum calculated under s. 103(4) of the Act, i.e., a 10% increase of the sum in (a) above levied as a result of the failure of the defendant to pay (a) above within 30 days from the date of service of the assessment notice;

(c) late payment of RM15,876.20 being increased sum calculated under s. 103(5A) of the Act, i.e., a 5% increase of the sums in (a) and (b) above levied as a result of the failure of the defendant to pay (a) and (b) above.

The defendant argued that (a) above is irrecoverable as the same represents a debt and the plaintiff is barred from recovery under s. 6(1)(d) of the Limitation Act 1953. At the same time it was argued that (b) and (c) were also irrecoverable as the same amount to penalties and the plaintiff is barred from recovery under s. 6(4) of the Limitation Act 1953 as penalties are irrecoverable one year after the date of accrual of the cause of action in respect of the penalty.

The plaintiff applied for summary judgment and the Senior Assistant Registrar granted the same. The defendant appealed.

Held:

[1] Applying *Arumugam Pillai v. Government of Malaysia* and *Chong Woo Yit v. Government of Malaysia* by virtue of the proviso to s. 33(1) of the Limitation Act 1953 limitation does not apply to the commencement of any proceedings by the government for recovery of tax.

[2] the word "debt" in s. 106(1) of the Income Tax Act 1967 does not change the complexion of the amount claimed - i.e., that the same is tax;

[3] in respect of the increased taxes the same are deemed to also be tax for the purposes of recovery and the defence based on the Limitation Act 1953 does not apply.

[Appeal dismissed.]

Cases referred to:
Arumugam Pillai v. Government of Malaysia [1976] 2 MLJ 72
Chong Woo Yit v. Government of Malaysia [1989] 1 CLJ (Rep) 9

Legislation referred to:
Income Tax Act 1967, ss. 103(4), (5A), 106(1), 142(1)
Limitation Act 1953, ss. 6(1)(d), 6(4), 33(1)
Rules of the High Court 1980, O. 14

For the respondent - Balia Yusof
For the applicant - Yeap Chye Choon; M/s. Yeap Chye Choon & Co.

JUDGMENT

KC Vohrah J:

On an O. 14 application the Senior Assistant Registrar gave leave to the plaintiff, the Government of Malaysia, to enter final judgment against the defendant. The plaintiff had claimed against the defendant for the recovery of RM333,400.33 being additional tax and late payment increases under the Income Tax Act 1967 (the Act) assessed against him in respect of the year of assessment 1974. Interest at the rate of 8% per annum from the date of judgment to date of realization was also claimed.

In support of the O. 14 application for leave to enter final judgment against the tax payer the plaintiff filed a certificate under s. 142(1) of the Act. It is signed by Assistant Director Puan Norlia bte. Zainol for and on behalf of the Director General of Inland Revenue and certifies that the amount due from the defendant (whose name and address were supplied) is RM333,400.33. Under the said provision the production of such a certificate giving the name and address of the defendant and the amount of tax due from him shall be sufficient evidence of the amount so due and sufficient authority for the Court to give judgment for that amount.

The defendant has appealed against the decision of the Senior Assistant Registrar.

The sum of RM333,400.33 claimed comprises three component amounts:

(i) the sum of RM288,658.30 being additional tax for the year of assessment 1974, notice of assessment of which, dated 18 January 1975, was served on the defendant;

(ii) the late payment increase of RM28,865.83 being the increased sum calculated under s. 103(4) of the Act at a 10% increase on the additional tax in item (i) on the failure of the defendant to pay the tax within thirty days of service of notice of assessment;

(iii) the late payment increase of RM15,876.20 being the increased sum calculated under s. 103(5A) of the Act at a 5% increase on the amounts in item (i) and (ii) on the failure of the defendant to pay both amounts.

Defence Counsel says the additional tax component is not recoverable as, if I understand him correctly, it has become a "debt" and is therefore barred from recovery under s. 6(1)(d) of the Limitation Act 1953. It is further argued that the late payment increases i.e., the sums in items (ii) and (iii), being penalties, are barred from recovery under s. 6(4) of the Limitations

Act since the provision bars recovery of penalties 1 year from the date on which the cause of action in regard to the penalties accrued. It is argued that the plaintiff was not entitled to summary judgment in this case and the Senior Assistant Registrar was wrong to give leave to the plaintiff to enter summary judgment against the defendant.

Before I proceed further, although it would appear from the affidavits filed by the defendant himself that many other issues were raised before the Senior Assistant Registrar, these other issues were however, not pursued before me. I believe they were abandoned because the law on these other issues has been settled.

I now touch on the salient facts of the case. The additional tax was assessed in 1975 and it was disputed by the defendant.

The defendant appealed to the Special Commissioners against the assessment of the additional tax and the appeal was dismissed. The defendant then unsuccessfully appealed to the High Court by way of case stated. He appealed right up to the Judicial Committee of the Privy Council which in 1981 (see 1981 1 MLJ 269) affirmed the decision of the Federal Court dismissing the appeal from the High Court.

This additional tax remained unpaid by the defendant even after disposal of the appeal and on 20 May 1987 the defendant was sent a notification notifying him of the late payment increases under s. 103(4) and (5A) of the Act (which I had set out earlier) and requiring him to settle the additional tax and late payment increases which altogether amounts to RM333,400.33.

Clearly in regard to the "additional tax" of RM288,658.70 assessed for the 1974 year of assessment the tax is "due and payable" and "may be recovered by civil proceedings as a debt due to the government" under s.106(1) of the Act. As regards each of the late payment increases imposed under s. 103(4) and 103(5A) each of these provisions state that the increased sum "shall be recoverable as if it were tax due and payable under this Act". Thus the late payment increases to fall under s. 106 of Act in that they amount to "tax due and payable" and "may be recovered by civil proceedings as a debt due to the Government"

In the Federal Court case of *Arumugam Pillai v. Government of Malaysia* [1976] 2 MLJ 72 at 73 Gill CJ (Malaya) said:

> In our judgment limitation as such does not apply to any proceedings by the Government for the recovery of any tax. This would seem clear from the proviso to s. 33(1) of the Limitation Ordinance 1953.

This principle has been re-iterated in the Supreme Court case of *Chong Woo Yit v. Government of Malaysia* [1989] 1 CLJ (Rep) 9 where Gunn Chit Tuan SCJ cited the above passage (and one other sentence following it) and said:

> We would agree that by virtue of the proviso to s. 33 (1) of the Limitation Act 1953, limitation does not apply to the commencement of any proceedings by the government for the recovery of any tax or interest thereon,...

The Supreme Court agreed with the rider in *Arumugam's* case (I have not reproduced either passage) relating to the defence of limitation when it is raised in regard to an assessment under s. 91 of the Income Tax Act 1967 but that rider does not concern us in this case.

With respect to Counsel for the defendant, I cannot see how he can argue that because the additional tax assessed has become a "debt" it therefore is barred from recovery under s. 6(1)(d) of the Limitation Act 1953. The word "debt" in s. 106(1) does not change the

complexion of the amount that is claimed; it still is a tax which in the words of the provision is "due and payable" and may be recovered by civil proceedings. So far as the late payment increases are concerned, whatever their nature and whether they amount to "penalties" or not, they are by statute deemed to be taxes for the purposes of their recovery; they "shall be recoverable as if (they) were tax due and payable under this Act". And in the same way they too, by virtue of s. 106(1), may be recovered by way of civil proceedings. I cannot see how the Limitation Act 1953 bars the recovery of these amounts, i.e., the additional tax or the late payment increases bearing in mind the principle enunciated in *Arumugam Pillai* and *Chong Woo Yit*.

As previously stated the certificate under s. 142(i) of the Act was filed with the O. 14 application. The Senior Assistant Registrar acted on this certificate and was therefore right in giving leave to the plaintiff to sign final judgment against the defendant.

In the circumstances I dismissed the appeal of the defendant.

Also found at [1990] 1 CLJ 282